Western Punjab College of Law

LL.B Part I

Notes: Introduction to Philosophy of Law

**Difference b/w civil law ad criminal law**

**What is civil law?**

Civil law is the law of the state or of the land, the law of the lawyers and the law courts. Civil law is the positive law of the land. It creates legal rights whether fundamental or primary. Positive law or municipal law is also used for it.

**Classification of civil law:**

Public law deals with the person and the state. Criminal law, constitutional law and administrative law are the examples of public law.

Private law deals with the matters among individual for example law of contract, property, marriage etc.

**What is criminal law?**

Criminal law is the kind of public civil law.

Criminal law is the law of punishment of individuals who commit crimes.

**Definition of criminal law:**

According to Black’s law dictionary:

The body of law defining criminal offences, regulating how subject are investigated, charged and tried and establishing punishments for convicted offenders.

**Objects of criminal law:**

The object and purpose of criminal law is the prevention of crime and every punishment is intended to have double effect, to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of community from committing similar crimes.

**Object of civil law:**

The object of civil law is the enforcement of rights whereas the object of criminal is the enforcement of punishments.

**Kinds of punishment under criminal law:**

**Deterrent**

Punishment is before all things deterrent and the chief end of the law of crime is to make the evil doer an example and a warning to all that are like minded. The main aim is not revenge but terror. An exemplary punishment should be given to the criminals so the others may learn a lesson from it. Example; sentence of imprisonment and death penalty.

**Retributive:**

Retributive means to give in return. The objective of this is to make the offender realize the suffering or the pain. According to Salmond the retributive purpose of punishment consists in avenging the wrong done by the criminal to society. In primitive societies punishment was mainly retributive. The person wronged was allowed to have his revenge against the wrong doer.

Example; the theory is based on the principle of an eye and tooth for tooth. In the Mohammadan criminal law, this type of punishment is called qisas.

**Preventive:**

The idea behind this is to keep the offender away from the society. This has also been called theory of disablement as it aims at; preventing the crime by disabling the criminals. Prevention would be the chief purpose of any punishment.

Examples:

The crimes by imprisonment, death, exile, forfeiture of office, cancellation of license.

**Reformative:**

The objective is to reform the behavior of the criminals. The idea behind this theory is that no one is born as a criminal. The criminal is a product of the social, economic and environmental conditions. By a sympathetic tactful and loving treatment an evolutionary change may be brought about in their characters.

Examples: establishment of the court for juvenile offenders under the code of criminal procedure is one of the instances of the application of this theory in Pakistan.

**Difference:**

1. **Desire of the parties:**

In civil law the plaintiff claims a right and given such remedy as he asks for while in criminal law punishment is awarded without reference to the wishes of the person injured.

1. **Types of wrong:**

Civil wrongs are private wrongs and crimes are public wrong. A public wrong is a wrong committed against the state or the community at large while civil wrong is the infringement of private rights.

1. **Place of administration:**

Civil law is administered is one set of Courts i.e., civil courts is administered in different set of courts i.e criminal courts.

1. **Proceedings:**

Civil justice is dealt with civil proceedings criminal justice is dealt with criminal proceedings.

1. **Parties:**

In civil proceedings, private individuals are parties plaintiff vs defendant.

In criminal proceedings state constitutes itself as a party state vs accused.

1. **Compromise:**

Compromise is available in all civil case while it is limited in compoundable cases in criminal cases.

1. **Staute:**

Civil cases are dealt with Code of Civil procedure while criminal cases are dealt with code of criminal procedure.

1. **Role of Mensrea:**

Mensrea is important element of criminal cases while it is not required in civil cases.

1. **Remedies:**

Successful civil proceedings results in a judgment for damages, injunction, declaration, specific perforamance etc while criminal proceedings results in death penalty, imprisonment, fine etc.